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STATE OF WASHINGTON  
BY   
DEPUTY  
COURT OF APPEALS  
DIVISION II

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

IN RE: )  
STATE OF WASHINGTON, ) Case No. 45178-6-II  
Respondent,) STATEMENT OF ADDITIONAL  
v. ) GROUNDS FOR REVIEW  
KEVIN VERNON JOHNSON, )  
Appellant.)

I, Kevin Vernon Johnson, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand that the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

**I. ADDITIONAL GROUND 1: False or Misleading Statements and Omissions in the  
Certification of Probable Cause (October 24, 2012)**

The certification of probable cause (R. at Docket No. 1), made by Senior Deputy Prosecuting Attorney Jack Jones under oath, was solely responsible for the court's decision to issue a summons for the defendant in this matter. Yet, the *Certification* contains false or misleading statements material to the court's finding of probable cause. The document also omits vital information regarding the operation of the alleged "transaction," between C/S #824 (Wayne Allen Blocher) and Defendant Kevin Vernon Johnson.

The Certification of Probable Cause, dated October 24, 2012, contains the following statements that its author, Senior Deputy Prosecuting Attorney Jack Jones, knew or should have known to be false or misleading, which were therein certified by him, under oath, as facts:

- a. The certification states that "under observation of detectives, the C/S gave the drug dealer \$6000 in pre-recorded buy funds to purchase methamphetamines...After buying the methamphetamine while being observed by detectives..." (Cert. of Prob. Cause at 1) In fact, detectives never actually observed an exchange being made between Wayne Blocher and the Defendant. The State's Amended Trial Memorandum states that "The two men met behind the shrubbery in the gas station parking lot for a brief moment before the man got

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back into the Green Dodge Shadow and the vehicle drove off..." (Pl. Amend. Tr. Mem. At 4) and does not contain any additional references to any observed transaction(s) between confidential source and defendant.

- b. The *Certification* states that the Confidential Source gave the defendant \$6000 to purchase one-half (1/2) ounce of methamphetamines (Cert. of Prob. Cause at 1). However, since the Confidential Source was purportedly ready to exchange \$360 to purchase one-quarter (1/4) ounce of methamphetamines earlier in the day (Pl. Amend. Tr. Mem. At 4), \$6000 seems an unreasonable amount of money to be exchanged for one-half (1/2) ounce of methamphetamines, in comparison.

Further, the Certification of Probable Cause omits the following relevant information, which likely affected the Court's determination of probable cause to issue summons to the Defendant in this case:

- a. The *Certification* refers to an "administratively authorized body wire to record the transaction with the drug dealer." (Cert. of Prob. Cause at 1) However, the certification omits the disposition of the audio recording obtained from any conversation between confidential source and the defendant. A disposition report dated April 16, 2012 and certified by Detective Kevin Landwehrle states that "as a result of the attached authorization for the body wire device, 'no interception, transmission or recording of any drug conversation occurred.'" A true and correct copy of the above-described disposition report is hereto attached and incorporated herein as Exhibit "A."
- b. The *Certification* refers to a "transaction" between (former) co-defendant Kurt Preston Johnson and C/S #824 that occurred on or around May 2, 2012. In the document, it is stated that "the confidential source drove to Defendant Kurt Johnson's residence, picked up Kurt Johnson..." (Cert. of Prob. Cause at 1, 2) Further, after the alleged transaction occurred, "Defendant then jogged up to the C/S's car, got in and the C/S drove away. The C/S dropped off Defendant Kurt Johnson..." (Cert. of Prob. Cause at 2) At the time of the alleged transaction between Wayne Blocher and (former) co-defendant Kurt Preston Johnson, Wayne Blocher's driving privileges were suspended for unpaid child support and/or traffic infractions. A true and correct copy of Mr. Blocher's driving record indicating that his driving privileges were suspended at the time of the alleged controlled buy is hereto attached and incorporated herein as Exhibit "B." In the Memorandum of Agreement under Thurston County Superior Court Cause No. 12-1-00121-2 (State v. Wayne Allen Blocher), Law Enforcement Case No. TNT 12-04, in which Wayne Blocher agrees to act as a confidential informant on behalf of law enforcement in return for dismissal of his charges under that cause number, the Confidential Source agrees that he will abide by the laws of the State of Washington, including not to drive without a valid operator's license, and that the contract between parties would not protect him from prosecution for other illegal acts, which may, in fact, be grounds to terminate the agreement of parties therein. Narcotics Task Force Detectives allowed Mr. Blocher to drive without a valid operator's license, effectively allowing Mr. Blocher to break the law during his contract with and under supervision of authorities. This allowance for breach of the law in this fashion by Task Force Detectives, whether through deliberate action or by negligence, calls the credibility of the entire investigation into

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question. A true and correct copy of the Memorandum of Agreement is hereto attached and incorporated herein as Exhibit "C."

The Certification of Probable Cause is an important preliminary legal pleading that establishes the plaintiff's grounds to prosecute a criminal felony charge pursuant to CrR 2.1. Due to the fact that a criminal felony conviction carries serious consequences, including imprisonment, fines, etc. it is important that the Deputy Prosecuting Attorney who writes the *Certification* state the facts as fully and truthfully as possible. The Certification is signed by the deputy prosecuting attorney under oath.

However, when authoring the *Certification*, Senior Deputy Prosecuting Attorney Jack Jones provided the following false or misleading statements and omissions of relevant, known facts: (a) Task Force Detectives never actually witnessed an exchange take place between the confidential source and the defendant; (b) the amount of money and/or drugs stated in the *Certification* grossly inflates the amount of illicit narcotics alleged to have been purchased by the confidential informant; (c) the *Certification* is void not only of any witness to an alleged "exchange" between confidential informant and the defendant; it is also fails to present any corroborating evidence to support the existence of said transaction, for example, the absence of an audio recording of such an "exchange," even though the C/S wore a body wire device at the time of the incident; and (d) Detectives' allowance for the confidential source to arbitrarily break the law with no consequences suggests that the credibility of the entire Task Force investigation into this matter may be questionable.

Either separately or cumulatively, items (a) through (d) listed in the above paragraph may have influenced the Court's finding of probable cause to issue summons in this matter. The State's false or misleading statements, certified to be representations of fact by a Senior Deputy Prosecuting Attorney, led to a prejudicial impact on behalf of the State, which prevented Defendant Kevin Vernon Johnson from having a fair trial.

## II. ADDITIONAL GROUND 2: Prejudicial Amendment to *Information* (March 4, 2013)

Information is generally allowed to be amended at any time prior to the reading of the verdict so long as the "substantial rights of the Defendant are not prejudiced," (CrR 2.1; *State v. Hockaday*, 144 Wn.App. 918, 925 184 P.3d 1273 (2008)). On the morning of the first day of the first trial in March 2013, counsel for the State, Deputy Prosecuting Attorney Karen Horowitz moved to amend information to omit the accomplice liability of co-defendant Kurt Preston Johnson from the record of the case, which was thereby granted by the Court. (R. at Docket No. 24) As stated above, Defendant Kevin Vernon Johnson remains as a co-defendant named in Cause No. 12-1-01455-1 (*State v. Kurt Preston Johnson*).

The Court's allowance of the amendment to information prior to commencement of the first trial on March 4, 2013 was ultimately prejudicial in favor of the plaintiff, as both defendant Kevin Vernon Johnson and (former) co-defendant Kurt Preston Johnson share the same first initial in their given name. Further, both defendants share the same surname, although they are not related by blood or by marriage. This makes both defendants "Mr. K. Johnson" when referred to in this case or in related matters. As stated by Detective Landwehrle, the initial investigation into these matters was not related to possible criminal activity by the defendant, but rather suspected criminal activity by the

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1       afore-mentioned subjects, Kristen Andrea Burton and Kurt Preston Johnson<sup>1</sup>. To  
2       illustrate an error of this type, in the *Certification*, Senior Deputy Prosecuting Attorney  
3       Jack Jones refers to "Defendant Johnson," and "Mr. Johnson"<sup>2</sup> in reference to Kurt  
4       Johnson, who is not the defendant in this case, although the verbiage of the *Certification*  
5       makes it difficult to differentiate between the defendant and Kurt Johnson. In context, it  
6       is easy to see that a mistake in the usage of "Mr. Johnson" is possible, if not probable, as  
7       either reference could be intended to identify either Kevin Vernon Johnson or Kurt  
8       Preston Johnson.

9       Defendant Kevin Vernon Johnson hereby contends that the amendment to information,  
10       which occurred on March 4, 2013, prior to the trial, was prejudicial in favor of the State,  
11       and was ultimately a factor leading to his conviction by jury on June 12, 2013.  
12       Investigative reports dated prior to the service of the search warrant upon the trailer at  
13       1725 Puget Street NE, Olympia referencing "Mr. Johnson" are notably references to the  
14       (former) co-defendant Kurt Preston Johnson, as detectives had not positively identified  
15       the defendant until that date. A large amount of information was admitted into evidence  
16       for consideration by the jury, whose twelve members were unaware of the existence of a  
17       second "Mr. Johnson" through removal of Kurt Preston Johnson's accomplice liability.  
18       Therefore, jury members had no other logical reason than to believe that any reference to  
19       "Mr. Johnson," throughout the trial proceedings was an identification of the defendant,  
20       when a large amount of the evidence presented in the case actually referred another  
21       individual, Kurt Preston Johnson. The confusion caused by the unfortunate similarity  
22       between the defendant and former co-defendant's names was a factor which contributed  
23       to the subsequent guilty verdict rendered therein, which may be in part attributed to the  
24       unintentional prejudice resulting from the removal of the co-defendant's accomplice  
25       liability on March 4, 2013.

26       **III.       ADDITIONAL GROUND 3: Alleged Out-Of-Court Identification of the Defendant by**  
27       **Witness Wayne Blocher (C/S #824)**

28       During the trial in March 2013, Prosecution Witness Wayne Blocher testified that he did  
29       not recognize the defendant, Kevin Vernon Johnson, as the individual from whom he had  
30       purchased narcotics in April 2012. Mr. Blocher indicated that the person from whom he  
31       had purchased the narcotics had longer hair and a slighter build than the defendant.

32       Also during the March 2013 trial, Detective Tygh Hollinger of the Thurston County  
33       Narcotics Task Force testified that, an earlier date, Mr. Blocher had identified the  
34       defendant, Kevin Johnson, to him through a copy of his Department of Licensing  
35       photograph (Hollinger Tr. Test., June 11, 2013). According to Detective Hollinger, the  
36       alleged identification occurred on or around May 5, 2012. Although Detective Hollinger  
37       testified to this out-of-court identification of the defendant by Wayne Blocher, little  
38       corroborating evidence exists to support his statement. None of the evidence provided to  
39       the defense as discovery materials prior to trial include an officer's report, transcript of  
40       recorded statement or substantially similar document that includes information regarding  
41       the details of Mr. Blocher's alleged identification of the defendant, nor the details of  
42       Detective Hollinger's investigation which yielded the identity of the defendant prior to

43       <sup>1</sup> (Landwehrle Tr. Test., June 10, 2013)

44       <sup>2</sup> (Cert. of Prob. Cause at 1)

47       

1 May 9, 2012. At the time, defense counsel Mr. Taylor objected to the out-of-court  
2 identification, however, when the Court ordered both parties to brief the issue, Mr. Taylor  
3 elected not to submit his brief and withdrew his objection, instead.

4 During both the March 2013 and June 2013 trials, the State introduced Exhibit #42, a  
5 copy of the Defendant's Department of Licensing photograph. In his trial testimony,  
6 Detective Hollinger indicated that Mr. Blocher identified the defendant through this  
7 photograph during the Task Force investigation of the April 11, 2012 incident. This  
8 photograph was not included in any officer's report, nor any investigatory source  
9 provided to the defense as part of discovery. The defendant's trial counsel, Mr. Taylor,  
10 objected to the introduction of Exhibit #42 into evidence, but his objection was overruled  
11 despite the State's failure to provide this information to defense beforehand. Defendant  
12 hereby renews its objection to the introduction of both State's Evidence Exhibit #42 and  
13 Detective Hollinger's testimony regarding Mr. Blocher's alleged out-of-court  
14 identification of the defendant, as this information should have been provided to the  
15 defense prior to trial in the discovery materials. Additionally, Detective Hollinger's  
16 testimony regarding Mr. Blocher's identification of the defendant is inadmissible, as it is  
17 hearsay, and as such does not fit any of the exceptions set forth in the Rules of Evidence.

18 Additional questions were raised during trial regarding the admissibility of the out-of-  
19 court identification of the defendant by prosecution witness Wayne Blocher to Detective  
20 Tygh Hollinger *during the course of the investigation*. During the second trial in June  
21 2013, the Court ruled that Mr. Blocher could invoke his fifth amendment rights and avoid  
22 potentially perjuring himself by allowing the witness to avoid answering questions  
23 regarding the identification of persons. Therefore, the State did not have a witness who  
24 was able to testify that the defendant was, indeed, the person from whom the confidential  
25 informant purchased narcotics in April of 2012. Thus, the out-of-court identification of  
26 the defendant by Mr. Blocher to Detective Hollinger became material to the State's case.  
27 However, this alleged identification by Mr. Blocher is hearsay<sup>3</sup> and does not fit into any  
28 of the delineated hearsay exceptions as set forth in the rules of evidence.

The State contended that, in this case, "a statement is not hearsay if the declarant testifies  
at the trial or hearing and is subject to cross-examination concerning the statement, and  
the statement is one of identification of a person made after perceiving a person." ER  
801(d)(1). The State further contended that "a prior identification remains admissible  
even though the witness claims at trial to have forgotten the prior identification or refuses  
to answer questions about it." *State v. Grover*, 55 Wn.App. 252, 777 P.2d (Div I 1989).

Defendant, at this time, renews its earlier objection to the introduction of this out-of-court  
identification of the Defendant by Mr. Blocher to Detective Hollinger, for the following  
reasons:

- a. Article I, § 22 of the Washington State Constitution provides that in criminal  
prosecutions, "the accused shall have the right... to meet witnesses against him face  
to face..." Defense, at the time of trial in June 2013, was unable to question Mr.  
Blocher about his out-of-court identification of the defendant to Detective Hollinger,  
alleged to have occurred on or around May 5, 2012. Mr. Blocher, by ruling of the

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<sup>3</sup> ER 801

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1 Court, was unavailable to testify on matters concerning the identification of persons  
2 due to concerns that Mr. Blocher could not avoid perjuring himself, no matter what  
3 answer he provided to such questions. Defense counsel was therefore prohibited  
4 from confronting Mr. Blocher about the alleged out-of-court identification to  
5 Detective Hollinger, pursuant to Wn. Const. Art. I, § 22. Consequently, the out-of-  
6 court identification to Detective Hollinger should be properly construed as hearsay,  
7 and as such, not admissible for consideration as evidence. The identification does not  
8 fit into the State's proposed hearsay exception under ER 801(d)(1) precisely because  
9 the Court's ruling made it impossible for Mr. Blocher to be subject to cross-  
10 examination in regards to his prior identification of Defendant Kevin Johnson, even if  
11 such event had been proven to have occurred.

- 12
- 13 b. Further, *Grover* refers to a witness who claims to have forgotten the prior  
14 identification of an individual or refuses to answer questions about such  
15 identification. In this instance, *Grover* is irrelevant and Mr. Blocher's identification  
16 of the defendant to Detective Hollinger remains inadmissible because Mr. Blocher  
17 neither claimed to have forgotten the prior identification of the individual in question,  
18 nor had he (initially) refused to answer questions about it. At a prior hearing, in  
19 March 2013 (first jury trial in this matter), Mr. Blocher affirmatively stated, under  
20 oath, that the defendant was not the individual from whom he had purchased  
21 narcotics on or around April 11, 2012.
- 22 c. The State may possibly contend that any statement made by Mr. Blocher at a prior  
23 hearing remains admissible. This would be because the defense had an opportunity  
24 to cross-examine Mr. Blocher on the out-of-court identification during the first trial,  
25 in March 2013. Since the out of court identification of the defendant is inconsistent  
26 with Mr. Blocher's testimony from the March 2013 trial, the admissible evidence  
27 should be Mr. Blocher's statement which denied that the defendant had delivered  
28 narcotics to him in April of 2012 because of it was taken as testimony done in open  
court (under oath). The statement made to Detective Hollinger during investigation  
of the case, if any, was without witnesses and not under oath as a deposition, nor was  
a recorded statement of the identification taken by Detective Hollinger.
- d. Detective Hollinger's failure to provide a police record (i.e. report, recorded  
statement by the informant, etc.) at the time of the alleged identification, to include  
(but is not limited to) State's Evidence Exhibit #42, does not provide corroborating  
evidence to suggest that the identification took place as stated in his trial testimony.  
Detective Hollinger stated that the out-of-court identification was made to him by  
Mr. Blocher on or around May 5, 2012. However, at the time the search warrant was  
served on the Puget Street address, on May 9, 2012, defendant is still referred to as  
"unknown male" (R. at Docket No. \_\_\_\_). It was only after the search warrant was  
served that detectives became aware of the defendant's identity, which was provided  
to them by Victoria Stotts, the Defendant's girlfriend, during execution of the search  
warrant at the trailer. The absence of a recorded statement by the informant, which is  
a notable deviation from the other statements made by Mr. Blocher (these other  
statements have been recorded, transcribed and were provided to the defense in  
discovery materials). Similarly, an absence of a report detailing Detective  
Hollinger's "investigation" into the identity of the defendant prior to May 9, 2012  
suggests that either (a) this identification of the defendant did not occur as testified  
by Detective Hollinger; or (b) the method of data collection differed from the

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standard procedures which usually yield admissible evidence in one of several prescribed forms.

Detective Hollinger on or around May 5, 2012 should be ruled inadmissible due to the following factors: (a) the issue of an out-of-court identification and State's Evidence Exhibit #42 (a copy of the Defendant's Department of Licensing photograph) does not appear in any discovery materials given to the defense prior to trial, including but not limited to police records, recordings or transcripts of recorded statement(s) provided by the informant or any witness(es) to the identification, etc.; (b) The Court's ruling that Mr. Blocher was unavailable to testify on matters concerning the identification of persons due to Mr. Blocher's concerns that he may perjure himself, pursuant to the U.S. Const., Amend. V, made it impossible for the defense to cross-examine Mr. Blocher regarding his out-of-court identification of the defendant to Detective Hollinger. Therefore, Mr. Blocher's out-of-court identification should be inadmissible pursuant to Wn. Const. Art I, § 22 and ER 801(d)(1); (c) State's allegation that Mr. Blocher's prior identification of the defendant to Detective Hollinger remains admissible even though the witness claims at trial to have forgotten the prior identification or refuses to answer questions about it is irrelevant, because Mr. Blocher neither claimed to have forgotten the identification or refused to answer questions about it. Rather, Mr. Blocher testified, at the first trial, that the defendant was not the person from whom he purchased narcotics. This testimony, under oath, should supersede any prior out-of-court identification of the defendant, to a detective or otherwise, as the statement was not under oath in testimony during the trial, nor was it part of a deposition; and (d) no corroborating evidence exists to suggest that Detective Hollinger's account of this out-of-court identification by Mr. Blocher actually happened, i.e. there is no police record or prior mention of the defendant's Department of Licensing Photograph, and until the date the search warrant was served (May 9, 2012), the defendant is still referred to as "unknown male" in law enforcement reports.

#### IV. ADDITIONAL GROUND 4: Abuse of Discretion by the Court (March 2013 Jury Trial)

During actual proceedings in the first trial (March 2013), at the time that State's Evidence Exhibit #42 (Defendant's Department of Licensing photograph) was introduced into evidence over the objection of defense counsel, Judge James Dixon personally took a pair of scissors and cut off the section of the Defendant's Identification Card that contained the Defendant's address (listed as 5219-B Puget Road NE, Olympia, WA 98516). The court's conduct in altering this particular exhibit by removing identifying information of the defendant from the rest of the document constitutes an abuse of discretion. The reasons for the Court's actions during the first trial regarding this alteration of evidence were unspecified; defense counsel Mr. Taylor objected to the Court's conduct, but was overruled.

Following the alteration of the evidence, the exhibit was shown to jurors at the first trial. Subsequently, Exhibit #42 was presented at the second trial as altered by Judge Dixon. Also presented to the juries at both trials was testimony by Task Force Detectives and related documents that purportedly established several "transactions," or controlled buy situations involving Mr. Blocher and the former co-defendant, Kurt Preston Johnson. Kurt Johnson's residence was established to have been located on 7<sup>th</sup> Avenue SE in Olympia, Washington. On several occasions, the confidential source either obtained narcotics from, or picked up Kurt Johnson in order to obtain narcotics from his residence on 7<sup>th</sup> Avenue SE. These events are described by detectives in the investigatory reports

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1 which this case is based upon. Further, in March 2013, the Court granted the State's  
2 motion to remove the accomplice liability of the co-defendant, Kurt Preston Johnson  
3 from this matter. The removal of Kurt Johnson's accomplice liability creates the  
4 probability jurors were likely to assume that all references to "Mr. Johnson," or  
5 "Johnson" in these reports referred to defendant Kevin Johnson, instead of the former co-  
6 defendant.

7 Consequently, Judge Dixon's physical removal of the defendant's identifying information  
8 from Exhibit #42 created a prejudicial impact in favor of the State, which prevented the  
9 defendant from having a fair trial. The removal of the defendant's identifying  
10 information prevented jurors from reaching the conclusion that the defendant could not  
11 be the same "Mr. Johnson," who resided on 7<sup>th</sup> Avenue SE, as his address is clearly  
12 shown as being on Puget Road NE in Olympia.

13 "Abuse of Discretion" occurs when a trial judge makes a mistake "clearly against reason  
14 or evidence," or against established law during a trial or on a ruling on a motion that a  
15 person did not get a fair trial. Examples of abuse of discretion include not allowing an  
16 important witness to testify, making improper comments that might influence a jury,  
17 showing bias or making rulings on evidence that deny a person a chance to tell his or her  
18 side of the matter.

19 Judge Dixon's actions in removing the identifying information from State's Exhibit #42  
20 constitutes an abuse of discretion by the court that was prejudicial in favor of the  
21 plaintiff. The judge in a criminal proceeding acts as an impartial authority, who does not  
22 favor either the State or the Defense. In this case, the act of cutting the identifying  
23 information from the right side of the copy of the defendant's Washington State  
24 Identification Card (State's Evidence Exhibit #42) constitutes abuse of discretion because  
25 it removed information possibly material to the defense which tends to show evidence in  
26 favor of the defendant (i.e. that the address of record for "Mr. Johnson," differs from the  
27 one stated in the trial memorandum and throughout the State's case). The reasons for  
28 Judge Dixon's actions, which were not explained during the trial in March 2013, were not  
explained to the satisfaction of the defense, despite the objection lodged by defendant's  
counsel, Mr. Taylor at the time. However, the reasons for Judge Dixon's actions are  
immaterial, as exhibits during trial, by (statute-cite) and (court rule-cite) may not be  
altered by the State, the Defense, or any other third party acting individually or on behalf  
of any entity following their introduction into evidence during a criminal trial. Therefore,  
regardless of Judge Dixon's motivation(s) for removing said information from the  
exhibit, it was not proper for him to alter evidence in the case. The judge's actions  
should appropriately be reviewed for an abuse of discretion, which caused prejudicial  
impact on behalf of the State of Washington, and prevented the defendant from having a  
fair trial. The defendant's motion therefore should be granted, the judgment and sentence  
vacated and the case remanded for new trial, with introduction of Exhibit #42 occurring  
only after an original of the document, the defendant's identification card, is produced in  
its entirety, and sections cut off by Judge Dixon are returned as part of the exhibit;  
alternatively, since the exhibit was not provided to the defense in discovery materials, the  
Court should appropriately sustain the defendant's objection to the entry of the document,  
entirely.

V. ADDITIONAL GROUND 5: Search Warrant Related Issues



1 If they knew who Kevin Johnsons ~~name~~ was Why wasn't his name anywhere on the search  
2 warrant.

3 IN court as evidence the state also used evidence taken (as stated) in the evidence removal  
4 form that the (notes) came out of Vicky Purse

5 No where on the evidence form is Kevin Johnsons name . In Fact task force didn't know  
6 who he was until Vicky told them that day.

7 Also the evidence used in the trial by the WSP lab tested positive for meth.. Again no where  
8 on the form is Kevin Johnsons name under Suspect Subject Kurt Johnsons name is the  
9 person listed. Tha amounts also varied by a couple grams.

10 Task Force also allowed Wayne  
11 Blocker to drive while his license  
12 was suspended

13 Task force reopened the first  
14 trial because they went and reviewed  
15 Tapes of phone calls from the jail.  
16 Calls in which Kevin Johnson has  
17 no control over who Wayne calls.  
18 after listening to the calls you can  
19 tell someone else also used  
20 Waynes pin ~~number~~ number to make  
21 calls. They also should have  
22 gotten that evidence before the trial.  
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